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EXAMINER

MULLEN, THOMAS J

ART UNIT PAPER NUMBER

2632

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,525

Applicant(s)

WILDMAN ET AL

Examiner

Thomas J. Mullen, Jr.

Art Unit

2632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) 23-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 18-20, 80 and 87 is/are rejected.
- 7) ☒ Claim(s) 1-17, 21, 22, 30-79, 81-86 and 88 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/3/04, 1/14/05</u> . (15 pages) | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 2632

1. Applicant's election of group I, claims 1-22 and 30-88, in the reply filed on 1/23/06 is acknowledged. Because applicant did not distinctly and specifically point out any particular errors in the restriction requirement (i.e., the broad statement "...without acquiescing in the Examiner's determination of separate inventions" is not a distinct or specific rebuttal), the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. The patent number, if any, associated with parent application 10/141,457 should be inserted at the top of page 1 of the specification in the appropriate place; likewise, the patent numbers associated with related applications 09/699,796, 60/306,818 and 09/798,398 (now U.S. Pat. Nos. 6,727,818, 6,972,683 and 6,622,088, respectively) should be inserted in the specification immediately after (or in place of) the application serial number, at least at the first occurrence thereof (e.g. at page 12, lines 5-6; page 18, last 2 lines; and page 35, lines 13-14).
3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Errors noted by the examiner include:

 - page 9, line 11, it appears that "a" should be deleted;
 - page 13, line 30, the first quotation mark is not accompanied by a second quotation mark (identifying the name of the publication);
 - page 14, lines 21-22, it appears that "receiver 32" should be --receiver 56--;
 - page 15, line 23, it appears that "a" should be deleted;
 - page 37, line 29, it appears that "constituents" should be --constitutes--;
 - page 39, line 9, it appears that one or more words should be inserted after "one of";
 - page 39, line 21, it appears that "other" should be --otherwise--;
 - page 54, line 26, it appears that "480" should be --580--;
 - page 55, line 8, it appears that "504" should be --704--;
 - page 62, line 14, after "room 812" it appears that "such" should be deleted; and
 - page 62, line 23, "laser" should be --lasers--.

Art Unit: 2632

4. The drawings are objected to because:

in Fig. 4, block 106, second line, it appears that "TO" (first occurrence) should be --AND--;

in Fig. 5, block 160, last line, it appears that "EXECUTED" should be --EXECUTING--;
and

in Fig. 13A, it appears that the dashed lead line extending downward from reference numeral 534 should instead extend upward from 534 towards the dashed circle (which appears to represent a "transceiver", note by comparison Fig. 11 and page 43, lines 20-21 in the specification).

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "virtual reality system wherein the user is presented a three-dimensional representation of the facility" (claim 67) must be shown or the feature(s) canceled from the claim(s). (If this element is shown in a publication which is incorporated by reference, the particular point in the reference where it is shown should be identified.) No new matter should be entered.

6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. Claims 1-22 and 30-88 are objected to under 37 CFR 1.75(a) for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 2632

Claim 1, line 4, "the asset" lacks clear antecedent basis (i.e., the preamble of the claim mentions "a plurality of movable assets", but no particular or single "asset" of the plurality is previously recited).

Likewise, on line 4 of claims 30, 65 and 80, "the asset" lacks clear antecedent basis.

At the end of claim 9, "the sidereal [sic]" lacks antecedent basis; i.e., it appears that "the side rail" was intended, but there is no prior recitation of "a side rail".

Claim 33, last 2 lines, "the user of the portable device which the user has access to" is vaguely worded.

Claim 34, line 3, it appears that "which" should be --to which--.

Claim 37, line 3, it appears that "which" should be --to which--.

Claim 43, line 1, "the map" lacks antecedent basis (note the dependency of the claim).

Claim 45, line 1, "the appropriate instructions" lacks clear antecedent basis (note "appropriate directions" in claim 30, last 2 lines).

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 18-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification and/or drawings fail to provide a clear teaching of what is meant by "recertif(ying)" an asset (or by logical extension, initially "certifying" an asset), as presently recited in claims 18-20. This concept is mentioned at page 33, lines 25-27 of the specification, but not explained anywhere in the disclosure.

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

Art Unit: 2632

harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 80 and 87 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No.

10/141,457. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations recited in claims 80 and 87 herein are substantially met by corresponding limitations in claim 1 in the '457 application, as follows: the "movable assets" of claim 80 herein correspond to the "objects" of claim 1 in the '457 application; the claim(s) in each application recite(s) "a plurality of badges", each having a "transmitter" and being coupled to the assets/objects; the "displacement sensor(s)" of claim 80 herein, for "indicating movement of the asset coupled to the badge and a direction of the movement" as recited in claim 87 herein, correspond to the "displacement sensor" as recited on lines 14-16 of claim 1 in the '457 application; the "locating system including a plurality of transmitters positioned at fixed locations within the...environment" of claim 80 herein corresponds to the "plurality of sensors disposed throughout the environment" of claim 1 in the '457 application; the "processor with an associated receiver" of claim 80 herein generally corresponds to the "master station having a processor...and a transceiver coupled to the processor" of claim 1 in the '457 application; the "identification signal from the respective badges" of claim 80 herein corresponds to the "badge ID" of claim 1 in the '457 application; the "identification signals identifying the transmitter(s)" of

Art Unit: 2632

claim 80 herein corresponds to the "unique ID" of the sensors as recited in claim 1 in the '457 application; and, "one of the processor and the first badge determines the location of the first badge based on the transmitter identifying signals" of claim 80 herein is met by "the master station processor determining the location of an object (having an associated badge) from the received badge ID and sensor ID" of claim 1 in the '457 application.

Claim 80 herein goes beyond what is taught by claim 1 in the '457 application by reciting that the badge "is configured to receive the transmitter identifying signals from the transmitters within range of the first badge" (lines 10-12 of claim 80), such that the badge transmits an identification signal directly to the processor rather than transmitting it to a fixed transmitter (i.e. the "sensor" of claim 1 in the '457 application) which would then transmit it to the processor. However, one skilled in the art would have recognized that distributing the processing burden associated with operating a system, among several processor-based devices forming the system rather than just processing all data at a "central" processor, would have enabled the system to handle more data and to increase the processing speed at the "central" processor, as well as reducing the requirements of the fixed transmitters or "sensors". Therefore, it would have been obvious to modify the system as recited in claim 1 of the '457 application in the manner set forth in claims 80 and 87 herein.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. No art rejection of claims 1-22 and 30-88 under 35 U.S.C. 102 or 103 is considered appropriate at this time.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The art cited by applicant has been considered (Loosmore et al (US 5682142), in particular, is noted). Conrad et al (US 5426425), Petelenz et al (US 6433690), Giraldin et al (US 6424264), Conway (US 5732401), Radomsky et al (US 6211790) and Pulkkinen et al (US 2002/165733) are cited to further show the state of the art.

Art Unit: 2632


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen, Jr. whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TJM


Thomas J. Mullen, Jr.
Primary Examiner
Art Unit 2632